

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**IN RE:**

**Randall's Island Family Golf  
Centers, Inc.**

**Chapter 11**

**Case No. 00-41065 (SMB) (jointly  
administered with Case Nos. 00-  
41006 through 00-41196)**

ORDER GRANTING OBJECTION OF FIRST REPUBLIC BANK TO MOTION OF DEBTORS FOR AN ORDER: (i) AUTHORIZING AND APPROVING CONSULTING AGREEMENTS BETWEEN THE DEBTORS AND OMINIC CHANG AND KRISHNAN THAMPI; (ii) RETENTION AGREEMENT BETWEEN THE DEBTORS AND ZOLFO COOPER MANAGEMENT LLC; (iii) KEY EMPLOYEE RETENTION; (iv) AMENDMENT TO THE DIP FINANCING AGREEMENT; AND (v) CERTAIN RELATED RELIEF.

This matter having been opened to the court by counsel for the Debtors herein, and after consideration of the moving papers, and any responses filed thereto, including the objection of First Republic Bank ("FRB"), and this court having determined that the severance package, including the payments and releases being given to Messrs Chang and Thampi (the "Consultants") pursuant to the consulting agreements are not based upon the sound business judgment of the Debtors, is impermissible, in that the consulting agreements call for compensation to the Consultants in excess of that which is reasonable under the circumstances, and this court having further found that the indemnification and releases are inappropriate under the Bankruptcy Code and applicable law, as there is no basis for administrative treatment for such claims if same were asserted by the Consultants in this court, it is on this                      day of                      , 2000

ORDERED that the Motion, as it pertains to the retention of the Consultants, and to the severance package provided, including the consulting agreements is DENIED, it is further

ORDERED that all other relief provided for in the Motion is GRANTED, including the retention of Zolfo Cooper, and the implementation of the employee retention program.

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STUART BERNSTEIN, U.S.B.J.

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AGREEMENT; AND (v) CERTAIN RELATED RELIEF.

First Republic Bank, by and through its undersigned counsel, hereby file this Objection to the Motion Of Debtors For An Order: (i) Authorizing And Approving Consulting Agreements Between The Debtors And Dominic Chang And Krishnan Thampi; (ii) Retention Agreement Between The Debtors And Zolfo Cooper Management LLC; (iii) Key Employee Retention; (iv) Amendment To The DIP Financing Agreement; and (v) Certain Related Relief. In opposition to the relief requested in the Motion, FRB respectfully states as follows:

1. FRB is a fully secured creditor of Voorhees Family Golf Centers, Inc, (“Voorhees”) holding loans in excess of \$2,000,000.00 on Voorhees’ golf facilities located in Voorhees New Jersey.
2. Voorhees’ case is being jointly administered by this court with the cases of the related debtors (the “Related Debtors”). The proceedings have not however, been substantively consolidated.
3. FRB is a non-primed fully secured creditor as to Voorhees, with a guaranty from the corporate parent Family Golf, Inc.

4. Despite the fact that the cases are not substantively consolidated moneys from Voorhees have been used to fund the Related Debtors' continuing losses. The reports shared with FRB by the Related Debtors shows that Voorhees operations have been helping to fund the Related Debtors' losses. In addition, the Related Debtors on a consolidated basis have lost substantial moneys.

5. FRB does not object to the portion of the Motion seeking to replace current management with the turnaround experts Zolfo Cooper.

6. Further FRB does not object to the program to retain non-insider employees necessary for the Related Debtors' continued operations.

7. FRB does however, object to the related relief requested in the Motion relating to the severance packages being offered the Related Debtors' current management. FRB objects in that certain of the relief requested in the Motion is not authorized by the Bankruptcy Code, is inappropriate under the circumstances, and requires creditors, including FRB to finance the relief requested, all to the detriment of the creditors of the Related Debtors.

8. Further FRB states that the Motion is in fact a Motion under Rule 9019, seeking to approve a settlement with the former officers of the Related Debtors, Messrs Chang and Thampi (the "Consultants").

#### THE CONSULTING AGREEMENTS

9. The Consulting Agreements essentially require two hundred and forty hours of service as a maximum, from each of the two Consultants, for an hourly rate of over \$800.00. Each consultant is also paid **up front** for the services, along with an additional \$100,000.00 "kicker" for the services, bringing the effective rate for the services to over \$1000.00 per hour.

There is no reason why the Consultants cannot be paid on an hourly basis, as provided, and at a much more reasonable rate.

10. Moreover, the Motion provides for each Consultant to receive an allowance for car, medical and health benefits, meals, lodging, travel, telephone and the like. The payment of a car allowance to consultants spending a maximum of five (5) hours a week is outrageous and not merited in this case. Moreover, the rate of compensation is sufficient for the Consultants to fund their own expenses.

#### THE RELEASES

11. The Debtors are granting releases to the Consultants for all acts, including intentional torts. In light of the pending regulatory issues surrounding the Consultants as officers and directors, the releases are improper and imprudent. FRB does not agree to any release being given to the Consultants, which release would have the effect of binding FRB.

12. Moreover, in connection with the Releases, the Related Debtors, and each of them, grant a Release to the Consultants, as officers and directors for any claim for repayment of their indemnity advances as discussed in the Motion, if and in the even it is determined that the Consultants as officers and directors were not entitled to indemnity. This fact, coupled with the objectionable indemnification agreements contained in the Motion, raises serious questions about the Related Debtors' exercise of sound business judgment in entering into the severance packages, including the releases.

13. FRB also objects to the release of the Consultants of any Avoidance Claims. The Related Debtors have not at all detailed: (a) whether such Avoidance Claims exist; (b) whether the Consultants have raised any defenses to same; (c) the value of any such Avoidance Claims; or (d) the likelihood of recovering an any such Avoidance Claims. Such rudimentary

information is required for FRB, or any other creditor to analyze the Releases proposed in the Motion.

14. At a minimum, creditors should know what the Related Debtors are giving up in connection with this portion of the Release.

#### INDEMNIFICATION AND RELATED EXPENSES

15. The Motion requires the expenditure of \$1,00,000.00 for indemnification of the Consultants, as to prepetition conduct allegedly engaged in by the Consultants in their former capacity as directors and officers. The advance of these moneys provides no benefit to the estates and is not chargeable against the Debtors' estates as an administrative expense.

16. All of the events giving rise to the asserted liability of the Consultants as directors and officers occurred pre-petition. Therefore, to convert these Prepetition claims into claims which are administrative in nature is inappropriate, and violative of relevant law.

17. FRB acknowledges that the Debtors are only obligated if they receive reimbursement from the Debtors' insurance carriers. It is not disclosed however, whether the request for reimbursement has been made, whether there is a reservation of rights as to such coverage, etc. Without this information, it is impossible to understand the extent of the Related Debtors' obligations for indemnity.

18. As numerous courts have cited, there is no indemnification claim entitled to administrative priority in favor of the Consultants. See Christian Life Center Litigation Defense Committee v. Silva, 821 F.2d 1370, 1374 (9<sup>th</sup> Cir 1987). See also In re Frenville, 744 F.2d 332, 336 (3<sup>rd</sup> Cir. 1984) (applying New York indemnity law).

19. As the conduct giving rise to the claim of indemnity occurred prepetition, there is no entitlement to administrative treatment for the payment or reimbursement to the Consultants

on their indemnity claims, therefore to essentially convert these claims into administrative claims is inappropriate.

20. FRB also objects to the discharge by the Debtors of the guaranty of Chang. Chang has an unsecured claim against the Debtors for these payments, if any, should he be called upon to pay them, and in fact Chang reserves his right to do so. Chang is not entitled to this relief.

21. FRB objects to any amendment of the DIP Financing Agreement to permit the payments requested in the Motion, and objects to any further upstreaming of revenues from Voorhees operations for this purpose.

22. FRB objects to the creditors funding the Consultants exit strategy as officers and directors of the Related Debtors.

23. FRB believes and therefore avers that the Motion should not be approved, particularly on such an expedited basis, and that further information is required in order to justify the relief requested.

WHEREFORE, FRB prays this court enter an order in the form attached denying the relief requested in the Motion.

Date: \_\_\_\_\_

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Edmond M. George, Esquire  
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I Edmond M. George, Esquire hereby certify that on \_\_\_\_\_, 2000 a copy of the OBJECTION OF FIRST REPUBLIC BANK TO MOTION OF DEBTORS FOR AN ORDER: (i) AUTHORIZING AND APPROVING CONSULTING AGREEMENTS BETWEEN THE DEBTORS AND OMNIC CHANG AND KRISHNAN THAMPI; (ii) RETENTION AGREEMENT BETWEEN THE DEBTORS AND ZOLFO COOPER MANAGEMENT LLC; (iii) KEY EMPLOYEE RETENTION; (iv) AMENDMENT TO THE DIP FINANCING AGREEMENT; AND (v) CERTAIN RELATED RELIEF. thereof was served upon the parties on the attached list by telefax and regular first-class mail.

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